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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 GABRIEL ECKARD,

10 Plaintiff,

11 v.

12 PATRICIA THOMAS,

Defendant.

CASE NO. C19-104-RSM-BAT

**ORDER ADOPTING REPORT AND  
RECOMMENDATION AND  
DIRECTING SERVICE**

13 The Court, after careful consideration of the Report and Recommendation of the  
14 Honorable Brian A. Tsuchida, United States Magistrate Judge, plaintiff's objections, if any, and  
15 the balance of the record, does hereby find and **ORDER:**

- 16 1) The Court adopts the Report and Recommendation;
- 17 2) Mr. Eckard's claims against defendants Clinton Moll and Jamie Kane related to the  
18 grievance process are DISMISSED;
- 19 3) Jamie Kane is DISMISSED as a defendant in the action;
- 20 4) Mr. Eckard's claims against Patricia Thomas and Clinton Moll related to his  
21 placement in the observation unit are also DISMISSED;
- 22 5) Defendants Patricia Thomas and Clinton Moll are the only defendants remaining in  
23 the case and the Clerk shall conform the docket accordingly;

1           6) The remaining claims are re-referred to Magistrate Judge Tsuchida;

2           7) The Court further orders:

3               a. Service by Clerk

4           The Clerk is directed to send the following to defendants Patricia Thomas and Clinton  
5 Moll, deputies at Snohomish County Jail, by first class mail: a copy of plaintiff's complaint and  
6 of this Order, two copies of the Notice of Lawsuit and Request for Waiver of Service of  
7 Summons, a Waiver of Service of Summons, and a return envelope, postage prepaid, addressed  
8 to the Clerk's office.

9           The Clerk shall also send a courtesy copy of the complaint and of this Order to the  
10 Snohomish County Prosecutor's Office, by first-class mail.

11           **The defendants are notified that they need not respond to the allegations with**  
12 **respect to the grievance process (which includes all claims against defendant Kane) and the**  
13 **allegations with respect to Mr. Eckard's placement in the observation unit because the**  
14 **Court has dismissed those claims, and defendant Kane, from the action.**

15               b. Response Required

16           Defendants shall have **30 days** within which to return the enclosed waiver of service of  
17 summons. Any defendant who timely returns the signed waiver shall have **60 days** after the date  
18 designated on the notice of lawsuit to file and serve an answer to the complaint or a motion  
19 permitted under Rule 12 of the Federal Rules of Civil Procedure.

20           Any defendant who fails to timely return the signed waiver will be personally served with  
21 a summons and complaint, and may be required to pay the full costs of such service, pursuant to  
22 Rule 4(d)(2). A defendant who has been personally served shall file an answer or motion  
23 permitted under Rule 12 within **30 days** after service.

1           **Defendants MUST serve a *Rand* notice concurrently with motions to dismiss based**  
2 **on a failure to exhaust and motions for summary judgment so that *pro se* prisoner plaintiffs**  
3 **will have fair, timely and adequate notice of what is required of them in order to oppose**  
4 **those motions. *Woods v. Carey*, 684 F.3d 934 (9th Cir. 2012).** The Ninth Circuit set forth  
5 model language for such notices:

6           A motion for summary judgment under Rule 56 of the Federal  
7 Rules of Civil Procedure will, if granted, end your case.

8           Rule 56 tells you what you must do in order to oppose a motion for  
9 summary judgment. Generally, summary judgment must be  
10 granted when there is no genuine issue of material fact – that is, if  
11 there is no real dispute about any fact that would affect the result  
12 of your case, the party who asked for summary judgment is entitled  
13 to judgment as a matter of law, which will end your case. When a  
14 party you are suing makes a motion for summary judgment that is  
15 properly supported by declarations (or other sworn testimony), you  
16 cannot simply rely on what your complaint says. Instead, **you**  
**must set out specific facts in declarations, depositions, answers**  
**to interrogatories, or authenticated documents, as provided in**  
**Rule 56(e), that contradict the facts shown in the defendant’s**  
**declarations and documents and show that there is a genuine**  
**issue of material fact for trial. If you do not submit your own**  
**evidence in opposition, summary judgment, if appropriate,**  
**may be entered against you. If summary judgment is granted,**  
**your case will be dismissed and there will be no trial.**

17 *Rand v. Rowland*, 154 F.3d 952, 962-63 (9th Cir. 1998) (emphasis added).

18           **Defendants who do not file and serve, in a separate document, the required *Rand***  
19 **notice will face (a) immediate denial of their motions with leave to refile and (b) possible**  
20 **monetary sanctions.**

21           c. Filing and Service by Parties Generally

22           All attorneys admitted to practice before this Court are required to file documents  
23 electronically via the Court’s CM/ECF system. All non-attorneys, such as *pro se* parties and/or  
prisoners, may continue to file a paper original with the Clerk. All filings, whether filed

electronically or in traditional paper format, must indicate in the upper right hand corner the name of the Magistrate Judge to whom the document is directed.

When an electronic filing exceeds 50 pages in length, a paper copy of the document (with tabs or other organizing aids as necessary) shall be delivered to the Clerk's Office for chambers. The chambers copy must be clearly marked with the words "Courtesy Copy of Electronic Filing for Chambers." A party filing a paper original does not need to file a chambers copy.

Additionally, any document filed with the Court must be accompanied by proof that it has been served upon all parties that have entered a notice of appearance in this case.

d. Motions

Regarding the filing of motions before the Court, the parties are directed to review Local Rule CR 7 in its entirety. A few important points are highlighted below:

Any request for court action shall be set forth in a motion, properly filed and served. Pursuant to Local Rule CR 7(b), any argument being offered in support of a motion shall be submitted as a part of the motion itself and not in a separate document. **The motion shall include in its caption (immediately below the title of the motion) a designation of the date the motion is to be noted for consideration upon the court's motion calendar.**

**In all instances where one of the parties to a lawsuit is incarcerated, all categories of non-dispositive motions not listed in Local Rule CR 7(d)(1) must be noted for the third Friday after the date of filing and service. See Local Rule CR 7(d)(2).**

All dispositive motions shall be noted for consideration no earlier than the fourth Friday following filing and service of the motion.

e. Direct Communications with District Judge or Magistrate Judge

1 No direct communication is to take place with the District Judge or Magistrate Judge with  
2 regard to this case. **All relevant information and papers are to be directed to the Clerk.**

3 f. The Clerk is directed to send a copy of this Order to plaintiff and a copy of  
4 this Order to the Hon. Brian A. Tsuchida.

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6 DATED this 12 day of March 2019.

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9 RICARDO S. MARTINEZ  
10 CHIEF UNITED STATES DISTRICT JUDGE  
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